

§ 600.506

50 CFR Ch. VI (10–1–09 Edition)

the identification of the FFV or its gear as required by this subpart;

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this subpart;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this subpart;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the EEZ that might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue Activity Codes 1 through 4 after those activity codes have been canceled under § 600.511;

(25) Fail to maintain health and safety standards set forth in § 600.506(d);

(26) Violate any provisions of regulations for specific fisheries of this subpart;

(27) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

(28) Violate any provision of this subpart, the Magnuson-Stevens Act, the applicable GIFA, any notice issued under this subpart or any permit issued under this subpart; or

(29) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any state, unless:

(i) The fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson-Stevens Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(ii) The fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501, and the Governor of that state has indicated concurrence to allow fishing consisting solely of transporting fish or fish products from a point within the boundaries of that state to a point outside the United States; or

(2) Within the EEZ, or for any anadromous species or continental shelf fishery resources beyond the EEZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.506 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson-Stevens Act, the appropriate Regional Administrator or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ will submit to the appropriate Regional Administrator or Science and Research Director and also to the Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910 a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of 3 consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the EEZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional Administrator or Science and Research Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional Administrator or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2)

is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional Administrator or Science and Research Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV that are equivalent to those provided to the officers of that vessel.

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional Administrator or Science and Research Director for the purpose of embarking and debarking the observer.

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages.

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position.

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations.

(7) Provide the observer copies of any records required by these regulations upon demand.

(8) Notify the observer at least 15 minutes before fish are brought on board or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Health and safety standards.* All foreign fishing vessels to which an ob-

server is deployed must maintain, at all times that the vessel is in the EEZ, the following:

(1) At least one working radar.

(2) Functioning navigation lights as required by international law.

(3) A watch on the bridge by appropriately trained and experienced personnel while the vessel is underway.

(4) Lifeboats and/or inflatable life rafts with a total carrying capacity equal to or greater than the number of people aboard the vessel. Lifeboats and inflatable life rafts must be maintained in good working order and be readily available.

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair.

(6) At least one ring life buoy for each 25 ft (7.6 m) of vessel length, equipped with automatic water lights. Ring life buoys must have an outside diameter of not more than 32 inches (81.3 cm) nor less than 30 inches (76.2 cm), and must be maintained in a state of good repair. Ring life buoys must be readily available, but not positioned so they pose a threat of entanglement in work areas. They must be secured in such a way that they can be easily cast loose in the event of an emergency.

(7) At least one VHF-FM radio with a functioning channel 16 (156.8 MHz), International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 kHz (SSB). Radios will be maintained in a radio room, chartroom, or other suitable location.

(8) At least one Emergency Position Indicating Radio Beacon (EPIRB), approved by the USCG for offshore commercial use, stowed in a location so as to make it readily available in the event of an emergency.

(9) At least six hand-held, rocket-propelled, parachute, red-flare distress signals, and three orange-smoke distress signals stowed in the pilothouse or navigation bridge in portable watertight containers.

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with

the International Regulations for Preventing Collisions at Sea.

(11) Clean and sanitary conditions in all living spaces, food service and preparation areas and work spaces aboard the vessel.

(e) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer 3 hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 600.504(d) to ensure the safety of the during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(f) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional Administrator or Science and Research Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(g) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS, either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment—*
(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the

costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 600.518(b)(2). Billing schedules will be specified by the terms of the contract between NOAA and the contractors. Billings for supplementary observer coverage will be approved by the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country, except as provided for by the Assistant Administrator. All bills must be paid within 10 working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (h)(4) of this section and § 600.518(d).

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers.

(ii) The costs of post-certification training required by paragraph (j)(2) of this section.

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the

cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials.

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson-Stevens Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer.

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages.

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data.

(v) The costs for data editing and entry.

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer.

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels,

or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(i) *Supplementary observer contractors—(1) Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services.

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers.

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation.

(iv) All data on costs.

(j) *Supplementary observers—certification, training—(1) Certification.* The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed.

Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified in paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the USCG or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of sup-

plementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer, in writing, of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7074, 7075, Feb. 12, 1998; 64 FR 39020, July 21, 1999]

§ 600.507 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged.

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ, for 3 years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the 3 years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson-Stevens Act.

(b) *Communications log.* The owner and operator of each FFV must record